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16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18  
19 Cung Le, Nathan Quarry, Jon Fitch,  
20 Brandon Vera, Luis Javier Vazquez, and  
21 Kyle Kingsbury on behalf of themselves and  
all others similarly situated,

22 Plaintiffs,

23 v.

24 Zuffa, LLC, d/b/a Ultimate Fighting  
25 Championship and UFC,

26 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**JOINT MOTION TO SUPPLEMENT  
EXPERT REPORTS**

1 Plaintiffs Cung Le, Nathan Quarry, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and  
 2 Kyle Kingsbury (collectively “Plaintiffs”) and Defendant Zuffa, LLC (“Zuffa”) (together with  
 3 Plaintiffs, “the Parties”) file this Joint Motion to Supplement the Expert Reports in this case. The  
 4 Scheduling Order for this case contemplates three rounds of expert reports (for class and merits  
 5 combined)—opening reports by Plaintiffs’ experts, opposition reports by Zuffa’s experts and  
 6 rebuttal reports by Plaintiffs’ experts. ECF No. 513. Given the complex issues involved in this  
 7 antitrust case, the substantial damages at issue, and the significant amount of documentary,  
 8 deposition, and other party and non-party evidence that has been produced and elicited in this  
 9 matter, the Parties seek to ensure, within the bounds of efficiency, fairness, and practicality, that  
 10 the expert record fairly and fully contains the parties’ experts’ respective opinions in this case.

11 The Parties are mindful of the dictates of Federal Rule of Civil Procedure 37, which  
 12 prohibits the use at trial of any information required to be disclosed by Rule 26(a) that was not  
 13 properly disclosed. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.  
 14 2001). As a result, the Parties now seek to supplement their expert reports pursuant to the  
 15 agreement discussed below. Because this supplementation—part of which asks the Court to  
 16 ratify the Parties’ previous expert submissions, and part seeks to provide for two minor additional  
 17 submissions—would modify the Scheduling Order in this case by allowing for additional expert  
 18 reports, the Parties bring this request as a joint motion rather than a stipulation. The Parties  
 19 request the following relief:

20 1. By way of background, and for purposes of clarity, the following expert reports and  
 21 declaration were prepared in this matter by either Plaintiffs’ expert economist, Dr. Hal Singer, or  
 22 Zuffa’s expert economist, Professor Robert Topel:<sup>1</sup>

- 23 a. **Expert Report of Hal. J. Singer, Ph.D.** (dated August 31, 2017) (“SR1”) (Exhibit  
 24 1 to the Declaration of Eric L. Cramer, Esq. (February 16, 2018), recorded on the  
 25 public docket at ECF No. 518-3 (Feb. 16, 2018)).

26  
 27 <sup>1</sup> This Motion relates solely to the expert submissions of Drs. Singer and Topel. The Parties have  
 28 also served other expert reports in this matter as well.

- b. **Expert Report of Professor Robert H. Topel** (dated October 27, 2017) (Exhibit 3 to the Declaration of Nicholas A. Widnell (February 16, 2018), recorded on the public docket at ECF No. 524-5 & 528 (Feb. 16, 2018)).
- c. **Rebuttal Expert Report of Hal. J. Singer, Ph.D.** (dated January 12, 2018) (“SR2”) (Exhibit 2 to the Declaration of Eric L. Cramer, Esq. (February 16, 2018), recorded on the public docket at ECF No. 518-4 (Feb. 16, 2018)).
- d. **Sur-Rebuttal Expert Report of Prof. Robert H. Topel** (dated Feb. 12, 2018) (not currently filed).
- e. **Supplemental Expert Report of Hal. J. Singer, Ph.D.** (April 3, 2018) (“SR3”) (Exhibit 49 to the Declaration of Eric L. Cramer, Esq. (April 6, 2018), recorded on the public docket at ECF No. 534-3 (Apr. 6, 2018)).
- f. **Declaration of Robert H. Topel, Ph.D. in Support of Zuffa, LLC’s Opposition to Plaintiffs’ Motion for Class Certification** (April 6, 2018) (Exhibit 1 to the Declaration of Stacey K. Grigsby (April 6, 2018), recorded on the public docket at ECF No. 540-5 (Apr. 6, 2018)).

2. On February 12, 2018, Zuffa served Plaintiffs with a sur-rebuttal report prepared by Professor Topel (item “d”), addressing issues Zuffa believes were raised for the first time in Dr. Singer’s timely served rebuttal report (item “c”). Plaintiffs disagree that Dr. Singer’s rebuttal report contained any improper or inappropriate rebuttal matter. In order to respond to Professor Topel’s sur-rebuttal (item “d”), Dr. Singer prepared and Plaintiffs served a Supplemental Expert Report with their opposition to Zuffa’s motion to exclude Dr. Singer (item “e”). For purposes of compromise, Plaintiffs will not object to Zuffa’s inclusion of Professor Topel’s February 12 Report (item “d”) as an exhibit to Zuffa’s upcoming reply in support of its motion to exclude Dr. Singer’s testimony, and, in return, Zuffa will not object to: (i) any matter in Dr. Singer’s rebuttal report (item “c”) as being improper rebuttal matter or otherwise improperly or untimely raised; and/or (ii) any matter in Dr. Singer’s Supplemental Report (item “e”) as improper rebuttal matter or otherwise improperly untimely raised.

1       3. Professor Topel submitted a new declaration after the close of expert discovery as Ex. 1 to  
2 Zuffa's class certification opposition brief (ECF No. 540) (the "Topel Declaration") (item "f").  
3 This was the third report or declaration prepared by Professor Topel and served on Plaintiffs in  
4 this case. Zuffa claims that the Topel Declaration (item "f") is merely a summary and roadmap to  
5 his first report (item "b"). Without agreeing with that characterization, Plaintiffs agree not to  
6 object to the inclusion of the Topel Declaration (item "f") as part of Zuffa's class certification  
7 opposition, and in return, Zuffa agrees not to object to Plaintiffs' inclusion with their upcoming  
8 class certification reply brief of a new declaration from Dr. Singer that (a) responds to the Topel  
9 Declaration, provided that Dr. Singer limits his comments and opinions to a summary of the  
10 opinions in his previous reports, (b) briefly responds to the computation reported in the April 6,  
11 2018 Nakamura Declaration (ECF No. 540-3) at para. 14, and (c) addresses matters discussed in  
12 paragraph 5 below. Further, Zuffa will not object if Plaintiffs submit summary charts equivalent  
13 to Exhibits 87-89 submitted with a declaration comparable to the Nakamura Declaration.

14       4. In response to the regression Dr. Singer discusses in his supplemental report (item "e") on  
15 page 39 (Table A2) (the "Singer Promotion Spend Regression"), Zuffa may submit, as an exhibit  
16 to its upcoming reply in support of its motion to exclude Dr. Singer's testimony, a short response  
17 from Professor Topel for the sole purpose of responding to the Singer Promotion Spend  
18 Regression, including through regression analysis. This Topel response will not (a) include,  
19 incorporate, or analyze any data other than Dr. Singer's regression data set from the backup files  
20 to his initial report (item "a"), Zuffa cost data included in the backup data to Dr. Singer's initial  
21 report, (item "a"), and any other data or documents Dr. Singer used in the regression and included  
22 in his Supplemental Report (item "e") to identify promotional expenses, or (b) respond to,  
23 discuss, or analyze any other of Dr. Singer's regression analyses or any other of his opinions or  
24 analyses. Plaintiffs will not object to the inclusion of such a limited report as an exhibit to  
25 Zuffa's reply in support of its motion to exclude Dr. Singer.

26       5. Plaintiffs may submit, as an exhibit to their reply in support of their motion for class  
27 certification, as part of the Singer Response Report discussed in paragraph 3 above, a short  
28 rebuttal to the Topel response (discussed in para. 4 above). This additional Singer Response may

1 respond to the Topel response addressed in paragraph 4, above, but will not include any new  
 2 regressions. The Court may consider the Singer Response Report as part of, *inter alia*, the  
 3 briefing and record concerning Zuffa's motion to exclude Dr. Singer's testimony. The parties  
 4 agree that the Court may consider the class certification briefing and exhibits thereto as part of the  
 5 record for purposes of the *Daubert* motions, and that the *Daubert* briefing and exhibits thereto  
 6 may be considered as part of the record for purposes of the Motion for Class Certification.

7 6. The parties agree further and respectfully request that all of the expert materials discussed  
 8 herein be treated for admissibility purposes as if they had been exchanged during the Court-  
 9 authorized expert discovery period.

10 In the interests of fairness in this complex antitrust class action, the Parties respectfully  
 11 request the Court grant their Joint Motion to Supplement Expert Reports.

12  
 13 Dated: May 7, 2018

14  
 15 BOIES, SCHILLER FLEXNER LLP

16 By: /s/ Nicholas A. Widnell

Nicholas A. Widnell

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 18 Ultimate Fighting Championship and UFC

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By: /s/ Eric L. Cramer

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**ATTESTATION OF FILER**

The signatories to this document are myself and Eric Cramer, and I have obtained Mr. Cramer's concurrence to file this document on his behalf.

Dated: May 7, 2018

By: /s/ Nicholas A. Widnell

Nicholas A. Widnell

*Attorney for Defendant Zuffa, LLC, d/b/a*

*Ultimate Fighting Championship and UFC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service of the foregoing **Joint Motion to Supplement Expert Reports** was served to opposing counsel on May 7, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Roderick Crawford

Roderick Crawford

An employee of Boies Schiller Flexner LLP